



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

This is an appeal from a preliminary hearing order. Consequently, the Board's jurisdiction to review preliminary hearing findings is limited to the following:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of the worker's employment?
- (3) Did the worker provide the employer with timely notice of the accidental injury and timely written claim for workers compensation benefits?
- (4) Whether certain other defenses apply.<sup>1</sup>

The term "certain defenses" refers to defenses that dispute the compensability of the accident under the Workers Compensation Act.<sup>2</sup>

Additionally, the Board may review those preliminary hearing orders in which it is alleged the judge has exceeded his or her jurisdiction or authority in granting or denying the relief requested.<sup>3</sup>

Whether claimant needs additional medical treatment is not a jurisdictional issue subject to review from a preliminary hearing order. Further, administrative law judges have jurisdiction at preliminary hearings to grant or deny medical benefits. Therefore, the Judge did not exceed his jurisdiction by denying claimant's request for additional medical benefits. Accordingly, this appeal should be dismissed.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>4</sup> Contrary to claimant's contention, the September 9, 2004 Order was not a final order as this issue may be addressed in the final award.

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<sup>1</sup> K.S.A. 44-534a(a)(2).

<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>3</sup> K.S.A. 2003 Supp. 44-551(b)(2)(A).

<sup>4</sup> K.S.A. 44-534a(a)(2).

**WHEREFORE**, the Board dismisses claimant's appeal of the September 9, 2004 preliminary hearing Order entered by Judge Clark.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2004.

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BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director